

Claims 11-39

Claims 11-27 are directed to a process for making high purity fatty acid lower alkyl esters. Claims 32-34 are directed to high purity fatty acid lower alkyl esters made by the recited process.

The high purity fatty acid lower alkyl esters of the present invention can be used in making other materials. These materials include esterified polyol (Claims 35-36), fatty acid polyol polyester (Claims 28-30), linked esterified alkoxyated polyol (Claim 31) and alkyl ester products (Claims 37-39).

The Examiner states that Claims 11-39 are “incomplete for omitting essential steps . . . The omitted steps are: the esterification step, the alkoxylation, and the linking step.” (7/5/01 Office Action, paragraph 6, *emphasis added*) It is respectfully asserted that the Examiner has misunderstood the present invention. As disclosed in the Specification (page 5, 2nd paragraph; page 23, 4th full paragraph – page 25, 1st paragraph), alkoxylation and linking are steps are related to making linked esterified alkoxyated polyol, as in Claim 31. These steps are not discussed as part of the process for making any other material, thus they are properly not the subject of any other claims; alkoxylation and linking are only relevant to the linked esterified alkoxyated polyol process of Claim 31.

Furthermore, Claim 31 is complete and not missing any steps, as all necessary steps are recited. For instance, step (d) recites “reacting a polyol with an epoxide to form an alkoxyated polyol.” As set forth at page 24, 1st paragraph, the alkoxyated polyols may be prepared by alkoxylation techniques known in the art; thus the particular manner in which this is performed is not critical and need not be specified in the claim. In addition, step (e) recites “reacting the alkoxyated polyol with a linking segment to form a linked alkoxyated polyol.” Pages 24 sets forth various ways in which this step may be performed; thus, the particular manner in which it is carried out is not critical and need not be specified in the claim.

Furthermore, Claims 11-39 do not need to explicitly recite “esterification step” as suggested by the Examiner. Element (a) of Claims 11-27 and 31-39 requires “converting a source of fatty acids to a product mixture comprising fatty acid lower alkyl esters and by-products.” How this “converting” is accomplished is not critical, as long as the recited product mixture results; thus, the explicit recitation of a particular type of “esterification step” is not necessary. Page 6 of the Specification describes ways in which the “converting” can be performed, thus one skilled in the art would be apprised of what is claimed. In addition, element (a) of Claims 28-30 recites the steps of how this may be performed in a particular embodiment.

Claims 37-39

Claim 37 is a product by process claim directed to an alkyl ester product. Step (d) recites that the alkyl ester product is made from the high purity fatty acid lower alkyl esters obtained from steps (a) – (c). Claims 38 and 39 are dependent upon Claim 37, and are

directed to specific types of alkyl ester products that can result. The Specification discloses that the fatty acid lower alkyl esters of the present invention can be used to make other materials; Claims 38 and 39 are directed to specific types of alkyl ester products that can be made.

The Examiner states that "Claims 28-39 recites the limitation 'esterified polyol; in line 2. There is insufficient antecedent basis for this limitation in the claim." (7/5/01 Office Action, paragraph 5) Because "esterified polyol" is a specific types of alkyl ester product, Applicant respectfully asserts that there is sufficient antecedent basis for the this term. (It is respectfully pointed out to the Examiner that the term "esterified polyol" does not appear in Claim 39, thus the Examiner's statement that there is no support for this term in Claims 38-39 is a typographical error.)

The Examiner also states that "Claim 37 as written, does not produce a fatty acid lower alkyl ester that contain oxyalkylene moieties or a compound that has been linked, nor does the language suggest such a step." (7/5/01 Office Action, paragraph 5) It is respectfully asserted that Claim 37 does not need to recite these particular steps; this claim is broadly directed to any alkyl ester products that can be made with the high purity fatty acid lower alkyl esters; Claims 38 and 39 more narrowly specify certain types of alkyl ester products that can be made. Because the particular way in which the alkyl ester products are made from the high purity fatty acid lower alkyl esters is not critical to the present invention, the particular "making" of the alkyl ester product in step (d) does not need to be specified; what is important is that high purity fatty acid lower alkyl esters of the present invention be used.

Accordingly, the Applicant respectfully asserts that all pending claims are definite and thus the rejection should be withdrawn.

B. 35 U.S.C. §102(a) Anticipation Rejection

Claims 11-39 are rejected as anticipated by EP 391,485 (hereinafter "Klok"). To anticipate a claim, the cited reference must recite each and every element recited in a claim as arranged in the claim. *In re Marshall*, 198 USPQ 344, 346 (CCPA 1978); *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131.

Claims 11-39 require, *inter alia*, that the product mixture is water-washed at an elevated temperature and elevated pressure. Klok, however, does not disclose this claim limitation. Because Klok does not recite each and every element recited in Claims 11-39, Klok does not anticipate the claims. Accordingly, the Applicant respectfully requests that the Examiner's rejection be withdrawn.

The Examiner states that "the water-washing step of the instant invention is conducted exactly as the water-washing step of EP'485." (1/15/02 Office Action, last sentence on page 4) However, there is no disclosure in Klok of water-washing at elevated temperature and pressure as is required by the present invention. In fact, the entire disclosure of Klok regarding water washing is as follows:

"The catalyst and soap components can be suitably removed by conventional water washing and filtration steps, and used as a feed-stock for soap production." (Column 5, lines 43-46)

"The mixture was then washed with about 3.5 l of demineralised water at 40°C." (Column 6, lines 41-42)

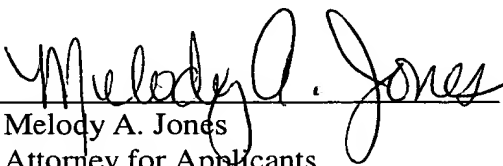
"The mixture was then washed with about 190 l of water 40°C." (Column 7, lines 17-18)

Because pressure during water-washing, much less elevated pressure, is not taught by Klok, the reference does not anticipate the present invention. Accordingly, Applicants respectfully request that the rejection be withdrawn.

CONCLUSION

The Examiner is respectfully requested to reconsider the Application in view of the foregoing remarks and to allow all pending claims as patentable. If the Examiner does not find the case in condition for allowance, the Examiner is respectfully requested to call Applicant's representative, Melody A. Jones, at (513) 634-6944 to schedule an interview.

Respectfully submitted,
For: Kenneally et al.

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